

Liability for Student Media

Who's responsible in the event of a lawsuit

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One of the most common excuses school administrators employ to justify censorship of student publications is that in order to protect the school from liability for articles that are libelous, invade privacy or are otherwise illegal, they need to closely supervise the actions of the students. But this excuse makes little legal sense, as a growing body of law indicates that censorship is more likely to create, rather than counteract, a school's potential for liability.

In reality, the best advice for most schools that want to protect their pocketbooks and stay out of court is to refrain from editorial decision-making and content control of student publications.

The general theory of legal liability is that any person who could have and should have prevented an injury can be held responsible for it. Thus, in order to not be held liable, a school should not put itself in a position where it could have or should have prevented an injury. This general liability principle is applicable to any context, but the specifics of liability for the actions of the student media will depend on the type of school involved -- whether it is a college or a high school, whether it is public or private -- because courts may afford different protection to each.

Public High Schools

After the Supreme Court's decision in *Hazelwood School District v. Kuhlmeier*,¹⁴ public high schools have greater authority to legally exercise control over many school-sponsored student publications. However, those schools that censor probably put themselves at a greater risk of legal liability. If public schools establish written policies similar to those recommended for private schools, the schools are more likely to be shielded from liability.

Additionally, Massachusetts, Iowa, Colorado, Arkansas, Kansas and California have adopted laws that limit the amount of control school officials have over the content of their student media.¹⁵ The Massachusetts, Iowa, Kansas, and Colorado laws explicitly limit liability of school officials for material printed in student publications unless the school has interfered with content decisions of student editors. Thus, high schools located in these states are afforded greater protections, making their situation more like that of a public college.¹⁶

High school administrators in particular may attempt to use the potential for liability as an excuse to control content, but that justification is not supported by court decisions. The Student Press Law Center has found no published court decisions anywhere in the country where a high school was found liable for the content of its student media. The best protection a school can take is not to censor but to hire competent publication advisers who can teach students about their legal responsibilities and to distance itself as much as possible from the content decisions

made by student editors.

Libel Insurance

Another route that some newspapers have taken to protect themselves against paying damages in a lawsuit is to obtain libel insurance. Even a value-priced policy can be an expensive undertaking for cash-strapped student media, so often only publications with large circulations and substantial assets will consider purchasing insurance.

For example, one private university student publication that comes out daily pays Employers Reinsurance Co. of Overland Park, Kan., \$3,616 a year for a \$1 million policy with a \$5,000 deductible. Another private university pays \$1,784 for a similar policy for 65 issues a year (twice a week). National Casualty Co. insures one public college daily newspaper for \$2,304 a year for a \$1 million policy with a \$20,000 deductible. Smaller newspapers need not look at these figures and panic, as the cost of insurance greatly depends on circulation. For instance, Walterry Insurance Brokers of Clinton, Md., says it can provide basic coverage to a weekly newspaper with a circulation of less than 1,500 for \$705 a year. This is the category in which many small schools would fall, and this figure may even be affordable to them. A school with a weekly paper with a circulation of 1,501 to 2,999 could pay only \$830. The deductible from Walterry for a weekly paper is typically \$5,000.

For basic coverage of a daily newspaper, Walterry's deductible is \$10,000. A daily paper with a circulation of less than 5,000 could pay \$1,110; annual premium for a circulation of 5,001 to 7,500 could cost \$1,445; for a circulation of 7,501 to 10,000 the price is \$1,665; and for 10,000 to 15,000 the cost is \$2,035. Basic coverage of an insurance plan generally includes protection from such claims as libel, invasion of privacy and copyright infringement. Errors and omissions coverage for printers' errors is almost always an additional charge.

In choosing an insurance plan, there are several things publication should consider. One of the most important is who decides on retractions or corrections. Many editors believe that the newspaper itself, not the insurance company's lawyer, should make that type of decision.

Other factors to consider include: whether to buy errors and omissions coverage, whether there are discounts for no losses in a five-year period, whether the policy covers intentional or malicious acts, whether the insurers will pay attorney's fees in addition to the policy limit on judgment costs, and whether the policy covers punitive damages.

Probably the largest factor affecting the cost of an insurance policy is circulation. Another important factor may be location. Colleges in Philadelphia, for example, may have to endure higher than average insurance premiums because Philadelphia is an area where courts have been unfavorable to libel defendants.

Another factor is whether the newspaper has been involved in past lawsuits. If the paper has been sued in the past, it will likely have higher than average premiums or deductibles. Insurers may also examine the newspaper's procedures on topics such as dealing with letters to the editor and verifying sources. Finally, some companies provide lower insurance rates to newspapers that have faculty advisers.

Although it does depend mainly on circulation, libel insurance may be a costly proposition and out of reach for many schools. Additionally, some believe it may invite lawsuits that would otherwise not be filed against poor students. But, for those that can afford insurance, it is a protection worth looking into. The question of legal responsibility ultimately turns on who has control over the printed material. The general test is that when a school exercises control over the content of the paper, it takes on a greatly increased potential for liability. Schools should then not employ the misguided excuse that content review of a paper will reduce the likelihood of liability. Obviously the best protection against being sued is to engage in careful, accurate reporting. Everyone involved, from the administrators to the student journalists, wants to avoid liability. The first step in doing so is promoting awareness of the law and the legal constraints that apply to student media.

¹ 441 N.Y.S.2d. 600 (1981).

² Id. at 606.

³ Lentz v. Clemson University, No. 95-CP-39-66 (S. Car. Ct. of Common Pleas, 1995). ⁴ Id. at 6.

⁵ 663 N.Y.S.2d. 4 (1995).

⁶ Bazaar v. Fortune, 476 F.2d. 570, 574, aff'd en banc with modification, 489 F.2d 225 (5th Cir. 1973)(per curiam), cert. denied, 416 U.S. 995 (1974).

⁷ Milliner v. Turner, 436 So.2d. 1300 (La. App. 1983).

⁸ Id. at 1302.

⁹ Mazart at 607.

¹⁰ Wallace v. Weiss, 372 N.Y.S.2d. 416 (Sup. Ct. 1975).

¹¹ Ruth Walden, 3The University's Liability for Libel and Privacy Invasion by Student Press, 2 in Journalism Quarterly 702, 707 (Fall 1988).

¹² Gallo v. Princeton University, 656 A.2d. 1267 (N.J. Super. A.D. 1995).

¹³ Wallace at 422.

¹⁴ 484 U.S. 260 (1988).

¹⁵ Ark. Stat. Ann. §§ 6-18-1201-1204 (Supp. 1995); Cal. Educ. Code § 48907 (Deering Supp. 1991); Colo. Rev. Stat. § 22-1-120 (1990); Iowa Code § 28022 (Supp. 1996); Kan. Stat. Ann. §§ 72.1504-72.1506 (1992); Mass. Gen. Laws Ann. ch. 71, § 82 (1991).

¹⁶ A federal court of appeals recently concluded that school officials in Mass. could not be held responsible for content decisions of student editors if they did not interfere with student control. Yeo v. Town of Lexington, 1997 W. L. 748667 (1st Cir., Dec. 9, 1997).

DMS Copyright Guide Series
Use of Video in Schools (Pre-recorded or Off-Air Tape)
Copyright and Fair Use Guidelines

This guide is based on the *Fair Use* guidelines in Section 107 of the Copyright Act which gives special privileges to schools when using copyrighted material.

To be considered legal use in educational settings, all four of the following conditions must be met when showing videos in schools. The video must be:

1. used in face-to-face instruction with a specific group or class
2. tied directly to a curricular objective
3. presented by an instructor or guest lecturer or a student as a part of instructional activities within that classroom
4. obtained legally (paid for, rented, or legally taped off-air)

Closed Circuit Broadcast within a school building is an acceptable form of distribution as long as all of these conditions are met.

If these 4 conditions are not met, the school must obtain written *public performance rights*, either when the video is purchased or later by obtaining permission from the publisher or distributor before showing the video. If you have questions or need further information, please check with your school media staff or Media Services.

****Any use of video in the classroom must follow the District guidelines of requiring principal and/or parent approval to show PG (elementary) PG-13 (middle school), or R (high school) to students.**

FAQ'S about Purchased or Rented Videos (pre-recorded)

Q. May I show my classes a video that's been purchased or rented?

A. Yes, if it meets all of the four conditions above.

Q. May I show my classes a video that's marked "for home use only"?

A. Yes, if it meets all of the four conditions above.

Q. Can a video be shown as a reward for achieving a goal or be shown to students who can't participate in a scheduled all-school activity? What about using a video during a cancelled recess due to weather?

A. No, not without *public performance rights* obtained from the copyright holder prior to viewing. Some Media Services' videos were purchased with public performance rights and could be shown in any of these situations. Performance Rights can be purchased for single or lifetime use of a video. Call Media for more information.

Q. Is it acceptable for school clubs or organizations to show a video as a fundraiser?

A. Only if you have purchased or obtained *public performance rights* prior to viewing.

Q. When parents are attending conferences, meetings, or school programs, can a video be shown to to entertain younger children?

A. Unfortunately the answer is no unless you have purchased or obtained *public performance rights* prior to viewing. Check with Media Services for videos that are available to schools that have performance rights.

In short, video use in schools is for instruction, and it is important that you help your students make that connection with discussion and guidance before and after viewing.

FAQ about videos borrowed from District Media Services

Q. Do the same "rules" apply to videos borrowed from DMS?

A. Yes. However, some of the videos in the DMS collection have *public performance rights* that were purchased with the video, most of which are PBS and ITV titles. This would allow the use of video with groups in any circumstances as long as no fee was charged.

FAQ'S about use of videos taped from cable or TV broadcasts

Q. May I show my classes a tape of a TV program?

A. Yes. It is legal to tape a program from regular broadcast TV (UHF and VHS channels) for educational use which allows a 10 day period for class viewing and 35 days for teacher review after the air date. Channels that are strictly available through cable (such as Discover, A&E, Biography, Bravo, HBO, etc.) do not all have the same *fair use* laws, but many do allow some use of programs in an educational setting. Check with Cable in the Classroom (www.ciconline.org) for specific channels and viewing/taping rights or contact the network in question directly or ask your school library media staff or Media Services.

Q. I have a program that I videotaped and I want to show to my classes year after year? Is that okay?

A. No. *Fair Use* in copyright law states that a tape may be used for 10 days after the taped broadcast to show to your classes. A teacher may then keep the video an additional 35 days for review by the teacher only. After the 45 days, the tape must be discarded or erased.

Q. I really want to continue showing a video of a program that I've taped. Is there any way to do that?

A. Yes. You may contact the broadcast company or owners of the copyright for permission to keep the tape. You must obtain written permission and keep it on file with the video tape. If you need addresses or contact information, Media Services can help.

Q. What about PBS programming and ITV programs? Are they copyright free?

A. They are not copyright free, but PBS and ITV have been very generous in giving schools the right to use their programming. Most PBS/ITV program guides indicate the length of time you may use the tape (anywhere from 10 days, 1-3 years, or in perpetuity). DMS has many of these titles for checkout. Many commercially produced tapes of PBS programs, however, still do not have *public performance rights* unless they were purchased with the video. They must follow the four *Fair Use Guidelines*. For further info see: www.rmpbs.org/itv or call Media Services.

Q. May I edit the programs I tape from TV or combine clips from different programs and put them together?

A. No, this is not permitted under the *Fair Use Guidelines*. Portions of a full video may be shown, but cannot be altered or excerpted or combined to create a different product.

Q. Why should my library media staff worry about showing a tape that I've recorded or purchased for my classes?

A. Library media staff are obligated to uphold copyright guidelines and laws. If they allow VCRs or CCTV or Safari broadcasts knowingly to be used for viewing videos that are not in compliance with copyright guidelines, they share liability with the teacher who requests it. If you have questions, call Media Services.

See also:

Thompson School District R2-J

Board of Education Policy - Copyright Compliance, Rev. July 9, 1997

Sections EGAD, EGAAA*-R, EGAD-R-1 through EGAD-R-4

Policies available on the District web site: <http://www.thompson.k12.co.us>

Additional Information:

<http://www.frii.com/~pmb> (Media Services)

<http://www.ciconline.org> (Cable in the Classroom)

<http://www.rmpbs.org/itv> (Rocky Mountain PBS) check with your media staff or DMS for User ID and Password

<http://falcon.jmu.edu/~ramseyil/copy.htm> (Copyright for Educators/Internet School Library Media Center)

COLORADO STUDENT FREE EXPRESSION LAW

(Cite as: Colo. Rev. Stat. 22-1-120)

Section 22-1-120 -- Rights of free expression for public school students

- (1) The general assembly declares that students of the public schools shall have the right to exercise freedom of speech and of the press, and no expression contained in a student publication, whether or not such publication is school-sponsored, shall be subject to prior restraint except for the types of expression described in subsection (3) of this section. This section shall not prevent the advisor from encouraging expression which is consistent with high standards of English and journalism.
- (2) If a publication written substantially by students is made generally available throughout a public school, it shall be a public forum for students of such school.
- (3) Nothing in this section shall be interpreted to authorize the publication or distribution by students of the following:
 - (a) Expression which is obscene;
 - (b) Expression which is libelous, slanderous, or defamatory under state law;
 - (c) Expression which is false as to any person who is not a public figure or involved in a matter of public concern;
 - (d) Expression which creates a clear and present danger of the commission of unlawful acts, the violation of lawful school regulations, or the material and substantial disruption of the orderly operation of the school or which violates the rights of others to privacy.
- (4) The board of education of each school district shall adopt a written publications code, which shall be consistent with the terms of this section and shall include reasonable provisions for the time, place, and manner of conducting free expression within the school district's jurisdiction. Said publications code shall be distributed, posted, or otherwise made available to all students and teachers at the beginning of the 1991-92 school year and at the beginning of each school year thereafter.
- (5) (a) Student editors of school sponsored student publications shall be responsible for determining the news, opinion, and advertising content of their publications subject to the limitations of this section. It shall be the responsibility of the publications advisor of school-sponsored student publications within each school to supervise the production of such publications and to teach and encourage free and responsible expression and professional standards for English and journalism.
- (b) For the purposes of this section, "publications advisor" means a person whose duties include the supervision of school-sponsored student publications.
- (6) If participation in a school-sponsored publication is part of a school class or activity for which

grades or school credits are given, the provisions of this section shall not be interpreted to interfere with the authority of the publications advisor for such school-sponsored publications to establish or limit writing assignments for the students working with the publication and to otherwise direct and control the learning experience that the publication is intended to provide.

- (7) No expression made by students in the exercise of freedom of speech or freedom of the press shall be deemed to be an expression of school policy, and no school district or employee, or parent, or legal guardian, or official of such school district shall be held liable in any civil or criminal action for any expression made or published by students.
- (8) Nothing in this section shall be construed to limit the promulgation or enforcement of unlawful school regulations designed to control gangs. For this purpose of this section, the definition of "gang" shall be the definition found in section 19-2-1111(2)(d)(II), C.R.S.

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Guidelines for Yearbook/Newspaper Publication

Law	Ethics
<p>U. S. Constitution</p> <p>Supreme Court Decisions</p> <p>Federal Law</p> <p>State Law</p> <p>School District Policy</p> <p>Yearbook/Newspaper Policy</p> <p>Sources for information about laws relating to school publications:</p> <p>Colorado High School Press Association www.chspa.org</p> <p>Student Press Law Center www.splc.org</p>	<p>Set of principles or values that define what is good and bad and the moral duty and obligation to follow the principles.</p> <p>Ethical behavior includes conforming to an accepted professional standard of conduct.</p> <p>Journalism Professional Standards:</p> <ol style="list-style-type: none"> 1. Is the material true and accurate from reliable sources? Can it be proven? 2. Is it important for the citizenry to be informed to aid them in acting as conscientious decision makers? 3. Is it interesting? 4. Does it avoid unnecessary harming of an innocent individual or group? <p>Professional Journalists Code of Ethics www.spj.org</p> <p>Yearbook Code of Ethics:</p>



2

Libel is a false printed statement that attacks a person's reputation.

Every reference to individuals should pass the libel test.

A person's reputation is a valuable asset that is legally protected. Yearbook staffs have to be on guard by reviewing all copy and photos for potential libel. For each photo and copy block, ask the question, "Could anyone consider this to be an attack on a person's reputation or good name?"

The basic elements of libel.

PUBLICATION: In order to be libelous, a statement must be published. A personal letter cannot libel a person.

IDENTIFICATION: An individual must be identifiable. Even if the person's name is not used, if even a small group of people can identify the person, the statement can be considered libelous.

INJURY: If an individual's reputation is damaged, even among a small group, the statement can be considered libelous.

FAULT: This is controversial because it is based on circumstance. A reporter's potential fault in libel cases depends on whether the individual claiming libel is a public figure or not, and on whether a reporter verified the information in a story before it was published. A public figure, like a mayor, can only claim damages if the reporter didn't check facts or acted with malice.

The best defense against a libel charge is truth.

A statement proven true is not libelous. An even better approach is to avoid potentially libelous statements. Check your facts carefully, make sure you consult more than one source and avoid any malicious intent.

1

Student press rights and responsibilities are part of publishing a yearbook.

Legal decisions have changed students' rights.

Supreme Court decisions and changing public views have increased restrictions on students' First Amendment rights.

In the landmark *Hazelwood School District v. Kuhlmeier* decision in 1988, the majority opinion of the court granted school administrators the right to exercise "editorial control" over school-sponsored publications.

The yearbook staff should therefore work with administrators to establish clear guidelines for what is acceptable in the publication. Communicate these guidelines to the staff.

Prior review and restraint can affect your publication.

In most states, school administrators have the right to review materials before publication and remove materials considered unsuitable. Know the policies of your school. If possible, have a discussion with the school administration before an incident so you and the administrator will know what to expect.

Students have responsibilities in yearbook publishing.

FAIRNESS: Tell both sides of a story without inserting the reporter's opinion.

ACCURACY: Check all names, quotes and information, especially copy submitted by non-staffers.

GOOD TASTE: The publication is free of questionable or obscene material.

3

Copyrights and trademarks may prevent the use of material belonging to others.

You can't use material that belongs to someone else without permission.

Much of the material that you run across in your daily life is legally owned by someone. For example, song lyrics, poetry, quotes, titles of books, movies, stamps, cartoon characters, photos of famous people, movie and television characters, games or currency all may have very strict reproduction rights.

A trademark is a word, name, symbol, device or any combination of these items used to identify a product, service, brand or idea. Most trademarks are identified with the symbols ® or ™. You cannot use these materials in the yearbook without getting permission from the owner. For example, you cannot use the Nike swoop as a graphic theme. Even the name "Elvis" and "Elvis Presley" cannot be used for a product since these names are controlled by the late singer's estate.

For copyright and trademark material, you must get permission from the owner to publish it in the yearbook. Your yearbook company cannot print material without knowing that you have secured permission.

You get permission by writing to the company that has ownership, such as Nike or Coca Cola. For sports teams, you need to write the team and ask for permission to use their logos. Your school librarian or media center director can help you find addresses.